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**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE** 2005 JUN 27 AM 10: 29

**June 27, 2005**

TRA DOCKET ROOM

*Re: Petition to Establish Generic Docket to* )  
*Consider Amendments to Interconnection* ) Docket No. 04-00381  
*Agreements Resulting from Changes of Law* )

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**MOMENTUM TELECOM'S MOTION IN SUPPORT OF CINERGY COMMUNICATIONS  
COMPANY'S MOTION FOR CLARIFICATION**

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Momentum Telecom, Inc. ("Momentum") respectfully submits this Motion in support of the motion filed by Cinergy Communications Company's on May 23, 2005, asking the Tennessee Regulatory Authority ("TRA" or "Authority") to clarify the terms under which competitive carriers may continue providing service to existing UNE-P customers during the FCC's transition period. Momentum also would like to bring to the TRA's attention a recent decision of the Indiana Utility Regulatory Commission granting the same relief Cinergy and Momentum seek in Tennessee.

**ARGUMENT**

At the May 16<sup>th</sup> agenda conference, the TRA issued a ruling allowing for BellSouth to refuse orders from CLECs to serve new customers through UNE-P. The panel, however, did not address the terms and conditions under which CLECs may continue providing service to existing CLEC customers who are in the "embedded customer base."

Cinergy's Motion for Clarification was filed in order to prevent BellSouth from "us[ing] any ambiguity in the TRA's ruling to refuse to process moves, adds, or change orders for Cinergy's existing customers." Cinergy Motion at 1. As explained in the accompanying affidavit, Momentum's experience since the TRA issued its ruling is that BellSouth has done just that. Therefore, Momentum joins with Cinergy in asking the TRA to rule that BellSouth must continue to bundle moves, adds, and changes for the embedded base of UNE-P customers during the transition period.

Momentum would also like to bring to the Authority's attention a recent order issued on June 13, 2005, by the Indiana Utility Regulatory Commission in Cause No. 42749.<sup>1</sup> In its order, the Indiana Commission ruled that SBC was required to process move, add, and change orders for existing UNE-P customers during the transition period. According to the Commission,

In light of the purposes of the TRRO's transition period, it is a reasonable conclusion that the FCC did not intend that a CLEC's ability to continue serving its existing UNE-P customer base during the transition period would be qualified with the inability to provide existing customers with routine telecommunications needs requiring moves, changes or adds. To conclude otherwise would be disruptive to both the customer and to the CLEC. These disruptions are avoidable and their avoidance is consistent with the purposes for having a transition period.<sup>2</sup>

Based on this reasoning, the Commission concluded that the purpose of the TRRO transition period is to preserve the status quo and, therefore, that SBC must handle orders for service to the embedded base "in a manner consistent with SBC's Indiana's processing of such orders prior to the effective date of the TRRO." Id.

The uncertainty as to whether Momentum can submit orders for customers who move or need new lines is having a detrimental effect on Momentum's business and its customers. As outlined in the attached affidavit of Brian Malone, Momentum's Director of Customer Care, Momentum is losing customers every day because of the company's inability to transfer service when the customer moves or to add additional lines requested by existing customers. In this current state of uncertainty, consumers are being forced to switch to BellSouth as their provider, even though they would prefer to remain with Momentum, because BellSouth is the only company that can transfer the customer's service or offer additional lines. Not only are CLECs losing a steady stream of customers, but their ability to win those customers back or attract new customers is being diminished each day.

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<sup>1</sup> A copy of the order is attached

<sup>2</sup> Order at 3

### CONCLUSION

In order to remedy this situation, Momentum respectfully requests that the TRA issue an order clarifying its ruling and expressly holding that BellSouth is required to continue providing service to Momentum's embedded base, including moves, adds, and change orders, when requested by the customer. Without that clarification, Momentum is in danger of losing a significant portion of its embedded customer base during the transition period.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry M. Walker KG  
Henry M. Walker, Esq.  
1600 Division Street, Suite 700  
P.O. Box 340025  
Nashville, Tennessee 37203  
(615) 252-2363

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

Guy M. Hicks  
BellSouth Telecommunications, Inc.  
333 Commerce Street, Ste. 2101  
Nashville, TN 37201-3300

James Murphy  
Boult, Cummings, Conners & Berry  
1600 Division Street, Ste. 700  
Nashville, TN 37203

Ed Phillips  
United Telephone - Southeast  
1411 Capitol Blvd.  
Wake Forest, NC 27587

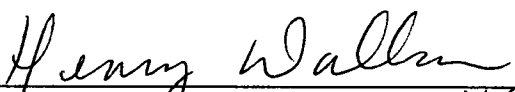
H. LaDon Baltimore  
Farrar & Bates  
211 7<sup>th</sup> Avenue North, Ste. 320  
Nashville, TN 37219-1823

John Heitmann  
Kelley, Drye & Warren  
1900 19<sup>th</sup> Street NW, Ste. 500  
Washington, DC 20036

Charles B. Welch  
Farris, Mathews, et al.  
618 Church Street, Ste. 300  
Nashville, TN 37219

Dana Shafer  
XO Communications, Inc.  
105 Malloy Street, Ste. 100  
Nashville, TN 37201

on this the 27<sup>th</sup> day of June, 2005.

  
\_\_\_\_\_  
Henry M. Walker                      KG

STATE OF ALABAMA )  
COUNTY OF Jefferson )

BRIAN MALONE, being first duly sworn, deposes and states as follows:

1. That I am the Director of Customer Care for Momentum Telecom, Inc. ("Momentum Telecom") a duly licensed Delaware corporation authorized to business in the state of Alabama, having its principle office at 1401 20<sup>th</sup> Street South, Birmingham, Alabama.
  2. That I am familiar with the books and records of Momentum Telecom and have personal knowledge of the subject matter.
  3. That as the Director of Customer Care, I am aware that the company is turning away customers everyday who are simply asking to maintain their existing service with Momentum Telecom. Just last week the company turned away 215 customers in eight states who were calling to inquire about transferring their service due to the fact that they were moving.
  4. That when this situation is encountered, the company's employees find themselves forced to read a script about recent regulatory developments and advise the customer to contact "another" provider.
  5. That prior to the inception of the new guidelines in April 2005, Momentum Telecom had consistently less than 4% churn.
  6. That most of the states in which Momentum Telecom does business have taken actions, which effectively prevent Momentum Telecom from offering any type of transfer of service or additional line order requests, thus making it extremely difficult to serve existing customers because Momentum Telecom cannot add new lines or move lines at the request of those customers.
  7. That because of this, customers that are moving to a new location must go back to Bellsouth to have the transfer order request completed. The company has had countless customers complain that they do not want to go back to Bellsouth and they certainly feel inconvenienced for this additional step in the process. This extra step for the customer, both residential and business, can result in delaying the preferred due date of their order.
  8. Further the affiant sayeth not.
- Dated this 16th day of June, 2005.

  
\_\_\_\_\_  
Brian Malone, Affiant

Sworn to and subscribed before me

this the 17 day of June, 2005.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 4-29-08

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
302 W. WASHINGTON STREET, SUITE E-306  
INDIANAPOLIS, INDIANA 46204-2764

<http://www.state.in.us/iurc/>  
Office: (317) 232-2701  
Facsimile: (317) 232-6758

**FILED**

JUN 13 2005

COMPLAINT OF INDIANA BELL TELEPHONE  
COMPANY, INCORPORATED D/B/A SBC  
INDIANA FOR EXPEDITED REVIEW OF A  
DISPUTE WITH CERTAIN CLECS REGARDING  
ADOPTION OF AN AMENDMENT TO  
COMMISSION APPROVED  
INTERCONNECTION AGREEMENTS

INDIANA UTILITY  
REGULATORY COMMISSION  
CAUSE NO. 42749

You are hereby notified that on this date the Presiding Officers in this Cause make the following Entry:

At the May 5, 2005 Prehearing Conference it was determined that this Cause would be temporarily held in abeyance. However, the Presiding Officers stated at the Prehearing Conference that a pending Appeal to the Full Commission and Motion for Clarification in this Cause would continue to be acted upon. This Entry rules on the Motion for Clarification.

On April 22, 2005, Cinergy Communications Company ("CCC") filed its *Motion for Clarification of March 9, 2005 Docket Entry Relating to Move, Add, and Change Orders for Existing Cinergy Communications Company Customers* ("Motion"). The principal finding of the March 9, 2005 Entry in this Cause was that the requirement of the Federal Communications Commission's ("FCC's") Triennial Review Remand Order ("TRRO")<sup>1</sup> to eliminate the unbundled network element platform ("UNE-P")<sup>2</sup> for new customers was effective as of March 11, 2005, even though the affected carriers had not yet amended their relevant interconnection agreements to reflect the changes of law brought about by the TRRO. The Motion seeks a clarification that the intent of the March 9th Entry was to require Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana ("SBC Indiana") to continue to accept orders for moves, adds, and changes to the accounts of CCC's existing, embedded customer base during the twelve month transition period established in the TRRO. The Motion specifies two instances, subsequent to March 10, 2005, in which SBC Indiana rejected CCC's requests to

<sup>1</sup> Order on Remand, *In re Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket No.01-338, 2005 WL 289015 (FCC Feb. 4, 2005).

<sup>2</sup> The unbundled network element platform consists of a complete set of unbundled network elements (local circuit switching, loops and shared transport) that a competitive local exchange carrier ("CLEC") can obtain from an incumbent local exchange carrier ("ILEC") in order to provide an end-to-end circuit.

effectuate embedded base customer requests to move service from one location to another.

On May 5, 2005, SBC Indiana filed its *Response to CCC's Motion for Clarification of March 9, 2005 Docket Entry* ("Response"). The Response argues that the effect of the March 9<sup>th</sup> Entry was to recognize the elimination of all new UNE-P arrangements after March 10, 2005, though features associated with circuit switching, such as call forwarding, should continue to be added or removed for the embedded customer base during the transition period. The Response also argues that the TRRO and its accompanying rules foreclose all new UNE-P orders, including new orders made at the request of a competitive carrier's embedded base customer.

On May 12, 2005, CCC filed its *Reply to SBC Indiana's Response to Motion for Clarification* ("Reply"), arguing that the March 9<sup>th</sup> Entry did not specifically address whether SBC Indiana was obligated to honor requests for moves, adds and changes to a CLEC's embedded customer base, and that requiring moves, adds and changes to an embedded customer base is consistent with the purpose of the TRRO's transition period and is in the public interest.

We agree with CCC that our March 9<sup>th</sup> Entry did not address whether SBC Indiana was obligated to accept requests for moves, adds and changes for a CLEC's embedded customer base. Our finding in that Entry that SBC Indiana should continue to provision circuit switching features for an embedded customer base during the transition period was in response to a specific example of concern raised by the Joint CLECs that an existing customer who received call forwarding prior to March 11, 2005, would not be able to remove that feature on or after March 11, 2005. It should not be concluded that by limiting our discussion to the subject of the example presented that we were making a comprehensive finding as to SBC Indiana's provisioning obligations for an embedded customer base.

And while we do not find SBC Indiana's interpretation to be baseless, we also do not find that the TRRO or its accompanying rules require foreclosure of new UNE-P orders for an existing customer. We think the answer to the question of whether SBC Indiana should be required to honor a new UNE-P request from a member of an embedded customer base is found in the FCC's purposes for establishing a transition period.

The discussion in ¶¶ 226 and 227 of the TRRO provides clear direction that a purpose of the twelve month transition period is to allow for an undisruptive period in which a CLEC's existing UNE-P customers can continue with that type of service arrangement while the CLEC converts these customers to an alternative service arrangement. It also seems clear that by allowing this exception to the elimination of UNE-P as of March 11, 2005, the FCC intended for a CLEC to have an unencumbered opportunity to continue to serve its embedded customer base after the transition period. A reasonable way to ensure this opportunity is to allow for the continuation of "business as usual" for these existing UNE-P customers during the transition period. It is neither

unusual nor unreasonable for a UNE-P customer to request a move, change or add to its existing service arrangement, such as the addition of a fax line or a move to a different location. However, if the CLEC provider is unable to secure this addition or move from the ILEC then the CLEC's embedded customer base has been disrupted and the CLEC stands a chance of losing that customer.

In light of the purposes of the TRRO's transition period, it is a reasonable conclusion that the FCC did not intend that a CLEC's ability to continue serving its existing UNE-P customer base during the transition period would be qualified with the inability to provide existing customers with routine telecommunications needs requiring moves, changes or adds. To conclude otherwise would be disruptive to both the customer and to the CLEC. These disruptions are avoidable and their avoidance is consistent with the purposes for having a transition period. We find, therefore, that the intent of the TRRO requires SBC Indiana, for the duration of the transition period, to honor UNE-P orders for a CLEC's embedded customer base in a manner consistent with SBC Indiana's processing of such orders prior to the effective date of the TRRO.

**IT IS SO ORDERED.**

  
Judith G. Ripley, Commissioner

  
William G. Divine, Administrative Law Judge

Date: 6-13-05

